

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CLARENCE JAY FAULKNER,

Plaintiff,

v.

ISRAEL "ROY" GONZALEZ, MICHAEL  
PARIS, LIZA ROHRER, CHERYL  
SULLIVAN, TERRI MATSEN,  
WASHINGTON DEPARTMENT OF  
CORRECTIONS,

Defendants.

CASE NO. 3:15-CV-05072-RJB-JRC

ORDER DENYING PLAINTIFF'S  
MOTION TO COMPEL

Before the Court is plaintiff's motion to compel discovery. Dkt. 19. The Court deferred ruling on plaintiff's motion until November 4, 2015 after defendants filed a status report and plaintiff filed a reply. Dkt. 23.

BACKGROUND

As an initial matter, the Court notes that there has been confusion surrounding whether plaintiff intended to substitute or supplement his first set of discovery requests, and it was not clear what discovery defendants had provided to plaintiff. *See* Dkt. 23. Thus, the Court deferred

1 ruling on plaintiff's motion to compel until November 4, 2015, after a status report had been  
2 filed by defendants and plaintiff filed a reply.

3 Defendants filed their status report on October 21, 2015. Dkt. 24. Defendants state that  
4 the parties conferred on October 19, 2015 and reached a consensus on how to move forward with  
5 discovery. *Id.* Defendants agreed to address plaintiff's discovery requests "to the extent possible"  
6 by October 30, 2015. *Id.* In addition, defendants agreed that plaintiff may promulgate five  
7 additional interrogatories and five additional requests for production. *Id.*

8 Plaintiff filed his response on October 26, 2015. Dkt. 25. Plaintiff states that he conferred  
9 with counsel for defendants, Mr. Dittman, on October 7, 2015. *Id.* Plaintiff states that Mr.  
10 Dittman told plaintiff that he would get back to plaintiff on October 12, 2015 to resume the  
11 discovery conference, but plaintiff asserts that this meeting never occurred. *Id.* Plaintiff does not  
12 address whether the parties conferred on October 19, 2015 or whether defendants addressed  
13 plaintiff's discovery responses. *Id.*

14 On November 5, 2015, plaintiff filed a declaration in support of his response. Dkt. 26.  
15 Plaintiff acknowledges that the parties conferred on October 19, 2015. However, plaintiff states  
16 that as of November 3, 2015, defendants have not contacted plaintiff nor have defendants  
17 provided the answers and productions noted in the status report. Dkt. 26. It is unclear what  
18 plaintiff refers to as the "answers and productions noted in the status report," but based on the  
19 status report filed by defendants, the Court interprets this as plaintiff's allegation that defendants  
20 have failed to respond to his additional five interrogatories and requests for production.

## 21 DISCUSSION

22 When a party fails to answer an interrogatory under Rule 33 or fails to permit inspection  
23 of documents under Rule 34, the requesting party may move the court for an order compelling  
24

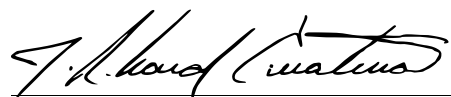
1 discovery. Fed. R. Civ. P. 37(a)(3). For purposes of such a motion, “an evasive or incomplete  
2 disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.” Fed.  
3 R. Civ. P. 37(a)(4).

4 To the extent that plaintiff moves to compel defendants to submit responses to his  
5 additional discovery requests, under Federal Rule of Civil Procedure 33 (Interrogatories to  
6 Parties) and Federal Rule of Civil Procedure 34 (Requests for Production), a party to whom the  
7 interrogatory or request is directed has 30 days to respond unless otherwise ordered by the Court  
8 or agreed upon by the parties. *See* Fed. R. Civ. P. 33(2) and Fed. R. Civ. P. 34(2)(a).

9 Here, plaintiff’s response and declaration do not state that his interrogatories or requests  
10 for production have been pending for more than 30 days or that a shorter time was stipulated to  
11 under Federal Rule of Civil Procedure 29. According to plaintiff’s declaration, defendants have  
12 failed to produce “answers and productions as noted in the status report submitted to the Court  
13 on October 21, 2015.” Dkt. 26. Plaintiff’s response and declaration are vague and unspecific.  
14 Without any specific facts showing how defendants’ responses to plaintiff’s additional  
15 interrogatories and requests for production were deficient or untimely, the Court cannot compel  
16 defendants to provide a further response.

17 Accordingly, plaintiff’s motion to compel is denied without prejudice. The Court notes  
18 that plaintiff may file a renewed motion to compel stating specific facts regarding when plaintiff  
19 submitted his discovery requests, what responses, if any, plaintiff received from defendants, and  
20 how defendants’ responses are untimely or deficient.

21 Dated this 10<sup>th</sup> day of November, 2015.

22  
23 

24 J. Richard Creatura  
United States Magistrate Judge